

CIVIL REVISION APPLICATION NO. 161 OF 2002

Dr. Arun Annat Volvoikar,
s/o Mr. Anant Volvoikar,
H.No.397, Virlosa, Penha-
de-Franca, Bardez, Goa.

... Petitioner.

Versus

1. Smt. Paru Harishcnadra
Narvekar, widow of late
Mr. Harischandra Narvekar,
major in age, household,
r/o H. No. 402, Virlosa,
Penha de Franca, Bardez, Goa,
2. Miss Geeta Harischandra
Narvekar, d/o late
Harischandra Narvekar, major,
in age, spinster, residing
at the same address,
3. Miss Svarna Harischandra
Narvekar, d/o late
Harischandra Narvekar,
major in age, spinster,
residing at the same
address,
4. Miss Santoshi Harischandra
Narvekar, d/o late
Harischandra Narvekar,
major in age, spinster,
residing at the same address,
5. Mr. Dinesh Harischandra
Narvekar, s/o late Harischandra
Narvekar, major in age,
bachelor, residing at same
address.

...Respondents.

Shri R. G. Ramani, advocate for the petitioner.

CORAM : F. I. REBELLO, J.

DATE : 25th July, 2003.

ORAL JUDGMENT

None present for the respondents when the matter is
called out, though served.

2. In the instant case, the petitioner who is the decree-holder applied for execution of the decree against the judgment-debtors. As the judgment-debtors did not appear, the Executing Court permitted the decree-holders to carry out the measures necessary for executing the decree. The decree-holders have done so. The decree-holders then applied to the Court that the costs incurred by them may be recovered from the judgment-debtors. That application came up for consideration before the learned Executing Court. The Executing Court proceeded on the footing that while permitting the decree-holders to carry out the necessary instructions for executing the decree, the Court had not ordered that the expenses incurred would be recovered from the judgment-debtor and in that light of the matter dismissed the said application.

3. A reading of Order XX1 Rule 32 (5) of the C.P.C. lays down that if the judgment-debtor does not carry out the direction for specific performance of the contract or the injunction, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder, or some other person appointed by the Court, at the cost of the judgment-debtor and upon the act being done, the expenses being incurred may be ascertained in such a manner as the Court may direct and may be recovered as if they were included in the decree. A judgment-debtor cannot

be placed on a better footing than when he himself has to comply with the directions. The rule has to be read in a manner so as to sub-serve the ends of justice. In the instant case, as the judgment-debtor refused to carry out directions as contained in the decree, the decree-holder was compelled to apply to the Court for getting the decree executed.

In my opinion, reading the rule in its correct perspective it would be that it is within the jurisdiction of the Court, even if order was not passed, at that stage directing the decree-holder to carry out directions and permitting recovery of costs, then even later to direct recovery of the costs, on the decree-holder satisfying that costs have been incurred.

In the light of that, the revision application is allowed, the impugned Order is set aside and the matter is remanded to the Executing Court to conduct an enquiry on the costs as claimed by the decree-holder and thereafter to proceed to recover the same in the manner contemplated under Order 21 of the C.P.C. after giving opportunity to the parties.

Civil Revision Application stands disposed of accordingly.

F. I. REBELLO, J.